IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.460 OF 1997

The State of Maharashtra .... Appellant
(Orig.Complainant)

V/s

Chandrakant Dagdu Sherkhane
Age 32 years,
Resident of Vairag
Vani Galli, Taluka Barshi
Dist.Solapur ... Respondent
(Orig.Accused)

Mrs. P.H. Kantharia, APP for the State.
Mrs. S.D. Khot, for respondent

Coram: V.G. PALSHIKAR
AND
R.C. CHAVAN,JJ.

Date: 8TH JULY, 2005.

ORAL JUDGMENT (Per R.C. Chavan, J.)

1. Being aggrieved by acquittal by the learned Additional Session Judge, Solapur of all accused persons tried before him for offences punishable under section 498A, 304B and 306 read with section 34 of Indian Penal Code, the State has preferred this appeal.

2. At the stage of admission itself, appeal as

against accused Nos. 1 to 5 was dismissed. Appeal as against accused No.6, Chandrakant Dagadu Sherkhane the sole respondent has now been heard.

3. The facts which relate to the case of respondent are briefly stated as under.

4. Respondent - Chandrakant was married to Swati on 10.2.1992. Daughter Kum. Payal was born in July, 1993. Between February 1992 and December 1993, respondent - Chandrakant underwent a post graduate course in Pathology. On 10.6.1994, Swati committed suicide. Prior to that, on 07.06.1994, she complained to her father about ill-treatment due to non-fulfillment of demand of Rs.25,000/-

5. On Swati’s committing suicide in the bath room of her house in the night of 9.6.1994, the parents were informed. After inquest panchnama ,post-mortem was conducted on the dead body, which revealed that Swati had died due to serious 100% burns. On 11.06.1994, complainant - Bhima gave report to the police whereupon an offence was registered and investigation commenced. The police performed spot panchnama, arrested the accused persons, recorded the statements of witnesses and on completion of investigation sent

chargesheet to the learned Judicial Magistrate. First Class, Barshi, who committed the case to the Court of Sessions at Solapur on finding that accused were involved in an offence triable exclusively by the Court of Sessions.

6. The learned Addl. Session judge framed charge against the accused for offences punishable under section 498A, 304B, 306 read with section 34 of the Indian Penal Code. All the accused persons pleaded not guilty to the charge framed and claimed to be tried. The prosecution examined in all 8 witnesses to prove the guilt of the accused. On completion of prosecution evidence, the learned Addl. Session Judge examined the accused under section 313 of the Criminal Procedure Code. The accused persons also filed their written statements. The accused denied that they had made unlawful demand or harassed or ill-treated Swati on account of non-fulfillment of such demand or even otherwise.

7. Upon consideration of prosecution case, in the light of arguments advanced, the learned Addl.Session Judge, Solapur came to hold that prosecution had not proved the guilt of accused and, therefore, proceeded to acquit the accused. Aggrieved thereby, the State

has preferred this appeal.

8. As already pointed out, appeal against the original accused Nos. 1 to 5 was dismissed at the threshold. We have heard the learned Addl. Public Prosecutor as well as the learned counsel for the respondent. The learned Addl. Public Prosecutor submitted that, in this case, there was adequate evidence tendered by victim's father - P.W.1 Bhima, P.W.3 - Satish Rokade and P.W.7 - Prabhavati show that victim was ill-treated on account of non-fulfillment of demand of Rs.25,000/-. She stated that in these circumstances the learned trial judge ought to have convicted the respondent of offence of dowry death.

9 The fact that Swati had died on account of 100% burns is not in dispute and is fully established by notes of post-mortem at Ex.62 and inquest panchnama at Ex.60. Panchnama of scene of offence at Ex.63 would show that incident occurred in bath room of the house of Dagadu Sherkhane i.e. father of the respondent. The sketch of spot is admitted by the defence at Ex.77. It appears that the police had initially registered a case of accidental death and performed inquest panchnama and panchnama of scene of

offence. Report of P.W.1 - Bhima was made only on the night of 10.6.1994 and was received by P.W.6 - Police Head Constable whereupon an offence was registered.

10 P.W.1 - Bhima stated that, at the time of marriage of Swati with Chandrakant, a sum of Rs.50,000/- was paid as dowry in addition to a gold locket weighing 2 tolas. Household articles were also presented. After the marriage, Swati started residing at her matrimonial home at Vairag. Her husband Chandrakant was also posted at Vairag at the relevant time. About 5 to 6 months after the marriage, Swati started complaining that the respondent was asking her to bring Rs.25,000/- as expenses for his higher education. P.W.1 Bhima states that Swati informed him that all the accused persons were ill-treating her on that count. About 8-9 months after the marriage, the respondent was transferred at Salgar Budruk. Hence, the respondent and Swati shifted to Salgar. Swati reported to her father that even at Salgar, the respondent repeatedly demanded Rs.25,000/-. Swati also stated to her father that her husband used to ill-treat her.

11 P.W.1, Bhima further states that on 03.06.1994, Swati and her husband came to Vairag for a

religious ceremony. Even Bhima and his family were invited for the function and Bhima and his son Sanjay attended the ceremony on 03.06.1994. Naming ceremony of a new born child was to be held in the family of the accused on 06.06.1994. Wife of P.W.1 - Bhima reached the house of accused on 05.06.1994 for that ceremony. According to Bhima, his daughter again complained that the accused was ill-treating and beating her on account of non-payment of money. After the ceremony on 06.06.1994, Bhima's wife brought Swati to parental house. Two days thereafter, the respondent came to Bhima's house and took Swati and Kum. Payal with him. Thereafter, news of death of Swati was received.

12 Bhima's wife Mrs. Suman was examined as P.W.2. She stated that a sum of Rs.50,000/- and 2 tolas of gold locket was given to the respondent in the marriage. She stated about ill-treatment to Swati on account of non-fulfillment of demand of Rs.25,000/- as expenses for higher education. She also stated that when she visited the house of accused for the naming ceremony, her daughter Swati complained of ill-treatment. Suman stated that one of the accused scolded Swati in her presence and so she brought Swati with her to the parental home.

13 P.W.3 - Satish Rokade claimed to have been staying at the house of accused for the purpose his studies from 1989 to March 1992 and again in June, July and August, 1992. He stated that in the course of his stay, the deceased complained to him that the respondent was beating her. He also stated that the deceased complained that the respondent used to beat her under the influence of liquor and put burning cigarette on her body. He stated that in October, 1992 he and Swati shifted in Barshi for education. He was staying 100 meters away from Swati's house. Same complaints were repeated to him by Swati at Barshi.

14 P.W.4 Sandipan was present at the settlement of Swati's marriage with the respondent. He stated that, at the marriage, a sum of Rs.50,000/-and two tolas of gold were given to the respondent. The witness curiously added that after the marriage, the sons of complainant who were his employees demanded Rs.2000/- on two occasions; Rs.3000/- once and Rs.10,000/- once more for paying the same to the respondent. This is nobody's story. This indicates the propensity of the witness to exaggerate. He stated that on 7.6.1994 when he had gone to the house of complainant, deceased Swati complained to him that

she was being ill-treated by the accused.

15 P.W.5 - Shantabai, sister of P.W.2 Suman, stated about payment of dowry of Rs.50,000/- etc. at the time of marriage. She stated that about 4 months before Swati's death, Swati and the accused had come to her house at Solapur, when Swati complained to her that the accused were ill-treating her and asking her to bring a sum of Rs.25,000/-.

16 P.W.7 - Prabhavati is wife of the respondent's brother Shashikant. She stated that she was sent back to her parental house on account of non fulfilment of demand for dowry. She stated that in her presence the respondent asked Swati to bring money for him towards the expenses of his higher education. Swati used to report to her that the respondent beat her under the influence of liquor and used to inflict burn injuries on her body. On 21.11.1992, Prabhavati had been driven out of the house for failure to satisfy the demand of Rs.40,000/- and since then she has been residing with her parents.

17. P.W.6, Gulmohamad Mulla - Police Head Constable has registered an offence on the report of P.W.1 Bhima. P.W.8, Shrikant Kalghatagi - Police

Inspector conducted the investigation.

18 The learned Additional Public Prosecutor submits that this evidence clearly shows that the respondent had been making demand for payment of Rs.20,000/- to 25,000/- to meet the expenses of his higher education and used to ill-treat Swati because of failure to meet this unlawful demand. This drove Swati to commit suicide. Therefore, according to the learned Addl.Public Prosecutor, the case squarely falls within the parameters of section 498A and 304B of the Indian Penal Code.

19 The Addl. Public Prosecutor drew our attention to the decision of Hon'ble Supreme Court in **Kunhiabdulla and another v.State of Kerala** reported in **AIR 2004 Supreme Court 1731**. In this case, the deceased was married to accused on 19.1.1989. There was an agreement to pay Rs.35,000/- as dowry. It was not paid in full. She was subjected to mentally and physically harassment and on 29.8.1991 the deceased committed suicide by jumping into well. The Sessions Judge found that there were unexplained discrepancies in evidence and, therefore, proceeded to acquit the accused. On appeal, the High Court reversed the finding and convicted the accused who took the matter

to the Hon'ble Supreme Court where it was urged that view taken by the Sessions Judge was possible view and the High Court should not have interfered in the matter. The Hon'ble Supreme Court examined the requirements of section 304B of the Indian Penal Code and presumption which could be drawn under section 113B of the Evidence Act. Analysing the provisions, the Court illustrated the essential ingredients of section 304B as under:

> " (i)The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
>
> (ii)Such a death should have occurred within seven years of her marriage.
>
> (iii)She must have been subjected to cruelty or harassment by her husband or any relative or her husband.
>
> (iv)Such cruelty or harassment should be for or in connection with demand of dowry.
>
> (v)Such cruelty or harassment is shown to have been meted out to the woman soon before her death".

20 As regards expressions "soon before her death" & "for or in connection with demand for dowry" in section 113B of the Evidence Act, the Court observed that expression "soon before" is a relative term and would depend on circumstances of each case and there could be no strait jacket formula as to what would constitute a period soon before the occurrence. The

Court also observed that expression "soon before" would imply that the interval between the concerned cruelty or harassment and death in question should not be much and that there must exist a proximate and live link between the effect of cruelty based on dowry demand and the death.

21 The learned Addl. Public Prosecutor submitted that in this case the evidence of P.W.1 - Bhima and P.W.2 - Suman would show that their daughter Swati complained of ill-treatment when she came to parental home which was just two days before the incident. She submitted that it would be natural to presume that after Swati left her parental home and before she committed suicide, some cruelty must have continued, propelling her to terminate her life in spite of the fact that she has an infant daughter.

22 The learned Additional Public Prosecutor drew our attention to the decision of Hon'ble Supreme Court in the case of **State of Andhra Pradesh v. Raj Gopal Asawa and Anr.** reported i**n AIR 2004 Supreme Court 1933**. In this case, the deceased was married to accused on 6.7.1989 and committed suicide on 2.4.1990. There was no direct evidence of accused person making any demand for dowry, though it seems that demand made

by eldest member of the family of the accused was construed to be an act of inducing such demand. The Court of Sessions convicted the accused. On appeal, it was urged in the High Court that there was no evidence to show any agreement or demand for payment of dowry before the marriage. The High Court held that to constitute "dowry", demand must be made directly or indirectly at the time of marriage or before the marriage, or at any time after the marriage but in connection with the marriage. The High Court therefore, set aside the conviction and thus, the matter went before the Hon’ble Supreme Court. The Hon’ble Supreme Court considered the provisions of section 2 of the Dowry Prohibition Act 1961. The Hon’ble Supreme Court observed that the High Court was not justified in holding that no demand was made. It held that in view of the fact that the death occurred in very few months of marriage and the evidence of witnesses indicated that shortly before the deceased committed suicide the demand for dowry was made, the plea raised by the accused was untenable and consequently reversed the judgment of the High Court in respect of some of the accused persons except the husband.

23. In the present case, there seems to be no

outstanding demand at the time of marriage which remained unfulfilled. A demand which is deposed to is in respect of expenses for post-graduate education. It may be seen that post-graduate course had come to an end in December, 1993. There is no evidence indicative of any such demand having been raised in the past. Had such demand been raised and victim subjected to harassment on account of such demand, there ought to have been atleast some incident in the past noticed by some third person.

24. The decision of Hon'ble Supreme Court in the case of Satvir Singh and others Vs. State of Punjab and another reported in **(2001) 8 SCC 633** was also cited at the Bar. In that case, young mother of two kids who was double graduate ran in front of a running train to end her life. She was driven to that action on account of the cruel treatment suffered by her at her matrimonial home. In stead of dying, she suffered several serious injuries. She turned into paraplegic. She herself described her plight as "a living corpse". The Sessions Court convicted the husband and in-laws for an offence punishable under sections 306 and 498A of the Indian Penal Code. The High Court affirmed the finding of Sessions Court and enhanced the punishment.

From the facts narrated in the judgment of the Hon'ble Apex Court that immediate cause for attempting to commit suicide was that the husband and in-laws suggested to the victim to end her life by throwing herself in front of running train. In the context of these facts, the Court considered the provisions of section 2 of the Dowry Prohibition Act, 1961 and in para 21 of its judgment the Court observed as under:-

> "Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of

> dowry. Hence, the dowry mentioned in section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage."

In the light of this legal position, evidence on record would have to be evaluated. It may first be seen that there is no evidence about demand of Rs 20,000/- or Rs 25,000/-. There is no evidence of ill-treatment on account of demand of Rs 20,000/- to Rs 25,000/- made during the life time of Swati. These allegations have been made only after the death of Swati.

25. The defence examined Bharat Kshirsagar who claimed to have been a friend of family of the respondent. He claimed that he used to receive letters from the deceased and, therefore, he was familiar with her handwriting. He proved the letter received by him (Ex.115). Number of letters were shown to him (Ex.118 to Ex.133) which, according to him, were in the handwriting of Swati. The letters which are addressed to Chandrakant seem to show cordial relationship between husband and wife. These letters had also been shown to P.W.1. Though he was unable to identify the handwriting of his daughter, he

did not say that the letters were not in his daughter's handwriting. These letters would create a serious doubt about the prosecution case that relationship between the parties had soared up because of unlawful demand.

26. The letters filed on record are inland letters bearing the postal stamps of various dates. The letters not only show the extremely cordial relationship between spouses but also rule out any possibility of demand for money from the respondent to victim. Letter at Ex, 118 dated 2/2/1993 seems to be written by Swati to the respondent, when the respondent was undergoing his post-graduate course. It seems that Swati was pregnant at that time. She had mentioned in the letter that she had not withdrawn money from the Bank till then. The said letter indicates that the husband had deposited necessary amount in the Bank which she was to withdraw for her own expenses. Another letter dated 12/9/1992 (Ex.119) exhorts respondent to concentrate on study. She had mentioned that she had withdrawn money in order to get a bath room ready in home because she had not felt it proper to go for bath to the house of relatives. This rules out any demand of money from the respondent to his wife. Most particularly, there was a letter dated

7/6/1994 three days before demise of Swati. The said letter may possibly have been received by her husband after her death. This letter mentioned about daughter Payal having slight fever and cold. It exhorts respondent to take care of his health and assures him that she was mentally with him.

27. Considering the series of letters, postal stamps thereon, period of time over which they were written, it may not be necessary to examine a handwriting expert to prove that the letters are written by deceased, particularly in view of evidence of defence witness Bharat. It may also be recalled that Swati's father could not identify the writing but did not say that letters were not in Swati's handwriting. All these letters rule out any discord between spouses. The story of demand for money and ill-treatments due to failure to comply is cooked up after the demise of Swati. Naturally, if there was any demand for money or ill-treatment, Swati who seems to have been a prolific letter writer would have written to her parents and other relatives also. Even if one presumes that she would not have explicitly complained to her parents about harassment or ill-treatment in order that her parents may not be unhappy, atleast there would be some letters indicating that some thing

was amiss. Failure of investigating machinery to secure even one such letter from the parents of victim reasonably leads one to draw an inference that no such letter existed.

28. There is no need to give any credence to the evidence of P.W 3 - Satish Rokade. It may be seen that he was staying with the accused up to March, 1992. The marriage of Swati took place in February, 1992. Thus, he may not have an occasion to know Swati closely within the first month of marriage. He states that he was again with the family of accused in June, July and August, 1992 i.e. just three months after the marriage of Swati. It is difficult to imagine that young bride would repose confidence in cousin of her husband and report about burns by cigarette etc. The witness appears to be thoroughly got up.

29. As for P.W. 7 - Prabhavati, suffice it to say that she herself was disgruntled having been driven out from the matrimonial home for whatever reasons which need not be examined in these proceedings. Prabhavati herself left matrimonial home in November, 1992.

30. In this context, it may be seen that though P.W.1

- Bhima denied that Swati resided at Barshi itself from April 1992 to August, 1993 to complete her typing and other courses, her mother P.W. 2 - Suman admitted that Swati was reading for M.A. and was also prosecuting the course for typing. Therefore, after marriage, she was attending typing course at Barshi commuting from Vairag and, thereafter, resided at Barshi in a separate room in Kasba locality. P.W. 3 - Satish himself had stated that he and Swati shifted to Barshi for education. He admitted that Swati was at Barshi till August, 1993. If this was so, there could be no occasion for P.W 7 - Prabhavati to know from Swati about ill-treatment meted out to Swati. Therefore, this witness is also a got up witness.

31. Allegations of Swati's parents after Swati's death come from the heart of mother and father who had lost their daughter in the early years of her marriage. Therefore their rancour is understandable. Consequently, their evidence, which does not receive any unimpeachable corroboration prior to death of Swati, may not form foundation of guilt of the respondent.

32. It may be seen that for attracting the provisions of section 304B, it is necessary to show that victim

must be subjected to cruelty or harassment in connection with dowry soon before her death. Since there may be no eye witness to see the event, the legislators thought it fit to prescribe a presumption in section 113B of the Evidence Act. But even for drawing this presumption, prosecution has to establish, first, that soon before her death such woman subjected to cruelty or harassment and secondly that such harassment was for or in connection with any demand for dowry. Then the Court shall presume that dowry death has been caused. Since event occurred within the matrimonial home, whether the victim was subjected to cruelty or harassment would have to be gathered only by drawing an inference. Now, in this case, as already pointed out, there is no demand for dowry. Secondly, there is no evidence to show that victim was subjected to cruelty soon before her death.

33. Offence of abetment to commit suicide punishable under section 306 of the Indian Penal Code could have been established, had it been shown that respondent had provoked the complainant to commit suicide. In this case, the victim was at her parental home till just before an incident. Incident took place just a day after she returned with her husband. Mere suicide

itself would not be enough to make the respondent liable in the absence of any evidence of any discord between the parties prior to incident. In the absence of any evidence to show that any unlawful demand was made or there was any strain between the spouses, it would be improper to say that the husband provoked his wife to commit suicide.

34. In view of this, findings of the learned trial judge are fully justified and do not call for any interference from this Court. Appeal is devoid of merits and is, therefore, dismissed.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)